Supreme Court, U.S.
FILED
MAR 5 1993
OFFICE OF THE CLERK

No. 92-1313

IN THE
Supreme Court of the United States
OCTOBER TERM, 1992

SACRAMENTO COUNTY BOARD OF SUPERVISORS,
Petitioner,
vs.
SACRAMENTO COUNTY LOCAL AGENCY FORMATION COMMISSION, et al.,
Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA SUPREME COURT

BRIEF *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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AMICUS CURIAE CITIES

The following cities within the State of California join in submitting this Brief *Amicus Curiae* in Support of Respondents' Opposition to Petition for Writ of Certiorari:

City of Big Bear Lake
City of Chico
City of El Paso de Robles
City of Grover Beach
City of Laguna Hills
City of Milpitas
City of Roseville
City of South Lake Tahoe
City of Walnut Creek

The cities listed above submit this Brief *Amicus Curiae* under the provisions of Rule 37.5 of the Rules of the Supreme Court which allow a political subdivision of a State to submit a Brief *Amicus Curiae* without the consent of the parties when the brief is submitted by the political subdivision's authorized law officer. Counsel of Record, Lois E. Jeffrey, is the City Attorney, and authorized law officer, for the City of Laguna Hills. The other *Amicus Curiae* cities, through their authorized law officers, have submitted letters to Lois E. Jeffrey authorizing those cities to appear as *Amicus Curiae* on this brief. Copies of those letters are being lodged with the Court under separate cover.

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BRIEF *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF INTEREST

Amicus Curiae are cities within the State of California. At the state level, Petitioner proceeded at the Court of Appeal for the State of California, Third Appellate District and the California Supreme Court on the theory that California Government Code section 57103(a), which limits the vote to confirm incorporation of a city to residents within the proposed boundaries of the new city, was unconstitutional as applied to the unique

circumstances of the County of Sacramento. In its Petition for Writ of Certiorari, however, Petitioner argues that section 57103(a) cannot survive constitutional scrutiny in any setting, whether the new city exists in Sacramento County or any other county of the state.

Because of this expanded challenge to section 57103, cities throughout California share a unique interest in opposing this Petition, and can offer this Court guidance regarding the statewide impacts of section 57103 which Respondents cannot address adequately in their oppositions to the petition.[1] Therefore, the *Amicus Curiae* Cities respectfully submit this brief setting forth their reasoning as to why this Court should not issue a writ of certiorari in this instance.

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[1] Cities enjoy a favored position in California government. Article XI, section 2 of the California Constitution directs the Legislature to provide uniform procedures for city formation, and to provide for city powers. In adopting the Municipal Organization Act of 1977, 1977 Cal. Stat. ch. 1253, sec. 9, at 4693, *repealed by*, 1985 Cal. Stat. ch. 541, sec. 1, at 1920 (effective Sept. 9, 1985), and later the Cortese-Knox Local Government Reorganization Act of 1985, Cal. Gov't Code §§ 56000-57550 (West Supp. 1993), the Legislature expressed its intent to promote the orderly formation and expansion of cities in urban areas because cities created the best mechanism for establishing community service priorities and provided more efficient local services. *See* Cal. Gov't Code § 56001 (West Supp. 1993); *Fig Garden Park No. 2 Ass'n v. Local Agency Formation Comm'n*, 162 Cal.App.3d 336, 342, 208 Cal.Rptr. 474, 478 (1984); *Ferrini v. City of San Luis Obispo*, 150 Cal.App.3d 239, 244, 197 Cal.Rptr. 694, 697 (1983). In this case, the California Supreme Court observed: "The evolution of cities is a natural process when population grows and communities begin to form their own identities." *Board of Supervisors v. Local Agency Formation Comm'n*, 3 Cal.4th 903, 907, 838 P.2d 1198, 1200, 13 Cal.Rptr.2d 245, 247 (1992).

SUMMARY OF ARGUMENT

In reaching its decision in *Board of Supervisors v. Local Agency Formation Commission*, 3 Cal.4th 903, 838 P.2d 1198, 13 Cal.Rptr.2d 245 (1992),[2] finding Government Code section 57103 constitutional on its face and as applied, the California Supreme Court properly analyzed and applied a long-line of precedents from this Court. The court found that section 57103 did not have a " ' "real and appreciable impact" upon the equality, fairness, and integrity of the electoral process.' " *Id.* at 914, 838 P.2d at 1204, 13 Cal.Rptr.2d at 251 (quoting *Choudrey v. Free*, 17 Cal.3d 660, 664, 552 P.2d 438, 440, 131 Cal.Rptr. 654, 656 (1976) which quotes *Bullock v. Carter*, 405 U.S. 134, 144 (1972)). The Supreme Court reasoned that individual interests in voting are "much attenuated" by the state's plenary power to oversee and regulate the formation of its political subdivisions and that this plenary power enables the state "to identify as differing in degree the interests of those who may vote under section 57103 and those who may not." 3 Cal.4th at 914, 838 P.2d at 1205, 13 Cal.Rptr.2d at 252. Because the California Supreme Court firmly roots its decision in this Court's holdings, no reason exists for this Court's review. Consequently, *Amicus Curiae* respectfully submits that the Petition for Writ of Certiorari should be denied.

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[2] The opinion is printed in Petitioner's Appendix at pages 1a through 26a.

THE CALIFORNIA SUPREME COURT APPLIED PRECEDENT FROM THIS COURT TO AFFIRM THE VALIDITY OF GOVERNMENT CODE SECTION 57103 IN THE STATE'S STATUTORY SCHEME FOR THE ORDERLY FORMATION OF CITIES

In *Board of Supervisors v. Local Agency Formation Commission*, 3 Cal.4th 903, 838 P.2d 1198, 13 Cal.Rptr.2d 245 (1992), the California Supreme Court considered Petitioner's challenge in the context of the Legislature's traditional power to regulate the formation of political subdivisions. Using that approach, the court indicated that the rational basis test should apply because the Legislature traditionally has the power to regulate the formation of political subdivisions and can determine if residents living outside the territory have a lesser degree of interest in the proposed action than those residing within the territory. *Id.* at 921-22, 838 P.2d at 1209-10, 13 Cal.Rptr.2d at 256-57. The court noted that applying strict scrutiny would (1) greatly unbalance the Legislature's careful accommodation of competing local government and private interests in the Cortese-Knox Act,[3] and (2) undermine the Legislature's power over the existence of cities and counties. *Id.* at

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[3] Contrary to the perception Petitioner leaves, the actual vote by the residents of the proposed new City does not occur in a vacuum. Rather, the vote constitutes the last of a long series of steps, and merely asks the residents of the proposed city if they indeed wish incorporation. Cal. Gov't Code § 57077(a)(2) (West Supp. 1993). *See Board of Supervisors*, 3 Cal.4th at 909-12, 838 P.2d at 1202-03, 13 Cal.Rptr.2d at 250 (describing the elaborate mechanism the California Legislature has established under the Knox-Cortese Act).

921, 838 P.2d at 1209, 13 Cal.Rptr.2d at 256.[4]

In reaching its decision, the California Supreme Court relied upon this Court's unbroken line of precedent. While section 57103 touches upon the fundamental right to vote, *Westberry v. Sanders*, 376 U.S. 1, 17 (1964), that does not necessarily mean that strict scrutiny must apply. *Burdick v. Takushi*, 504 U.S. ___, 112 S.Ct. 2059, 2063 (1992).[5] Unless a "real and appreciable

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[4] As noted by the California Supreme Court, section 57103 gives potential city residents the "final say" in a legislative scheme that balances diverse political and economic interests:

> [T]he voters' role under the Cortese-Knox Act in confirming an incorporation is rather like that of the masons who place a keystone at the apex of a high and intricate arch. The voters' approval is an essential piece, but . . . by the time the question reaches the electorate the incorporation proposal will already have undergone a labyrinthine process containing elaborate safeguards designed to protect the political and economic interests of affected local governments, residents, and landowners.

Board of Supervisors, 3 Cal.4th at 912, 838 P.2d at 1203, 13 Cal.Rptr.2d at 250.

[5] In *Burdick*, this Court stated:

> Election laws will invariably impose some burden upon individual voters. Each provision of a code, "whether it governs the registration and qualifications of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects — at least to some degree — the individuals right to vote and his right to associate with others for political ends." Consequently, to subject every voting regulation to strict scrutiny and to require that the regulation be narrowly tailored to advance a compelling state interest,

(continued)

impact" infringes on the equality, fairness and integrity of the electoral process, *Bullock v. Carter*, 405 U.S. 134, 144 (1972), a voting scheme satisfies the Constitution if it passes the test of minimum rationality — *i.e.*, if it bears some fair relationship to a legitimate public purpose. *Plyler v. Doe*, 457 U.S. 202, 216 (1982). *See also Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 446 (1985) (the classification must be "rationally related to a legitimate governmental purpose").

This Court has held that cities and counties exist only at the sufferance of the sovereign state. *United Building & Construction Trades v. Mayor*, 465 U.S. 208, 215 (1984). As such, the states possess plenary power to create and dissolve these entities. *Lockport v. Citizens for Community Action*, 430 U.S. 259 (1977); *Hunter v. Pittsburgh*, 207 U.S. 161 (1907).

In *Lockport*, this Court faced a constitutional challenge to a New York law which provided that a new county charter could go into effect only if approved in a referendum election by concurrent majorities of the county's city and noncity dwellers. In the election in question, a substantial majority of city dwellers approved a proposed city charter, but less numerous noncity voters narrowly defeated it. Consequently, the charter proposal failed because of the concurrent

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(fn. continued)

> as petitioner suggests, would tie the hands of States seeking to assure that elections are operated equitably and efficiently. Accordingly, the mere fact that a State's system "creates barriers . . . [ ] . . . does not itself compel close scrutiny."

Burdick, 504 U.S. at ___, 112 S.Ct. at 2063 (ellipses in original) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983) and *Bullock v. Carter*, 405 U.S. 134, 143 (1972)). *See also McDonald v. Board of Election Comm'nrs*, 394 U.S. 802 (1969).

majority provision. An equal protection lawsuit ensued with the plaintiffs claiming that the procedure violated one person-one vote principles because it gave the less numerous noncity voters disproportionate power to thwart the wishes of all those affected by the vote.

In an unanimous opinion, this Court rejected the equal protection contention stating:

> The equal protection principles applicable in gauging the fairness of an election involving the choice of legislative representatives [*i.e.*, the one person-one vote cases] are of limited relevance ... in analyzing the propriety of recognizing distinctive voter interests in a "single-shot" referendum. In a referendum, the expression of voter will is direct, and there is no need to assure that the voters' views will be adequately represented through their representatives in the legislature. The policy impact of a referendum is also different in kind from the impact of choosing representatives — instead of sending legislators off to the state capitol to vote on a multitude of issues, the referendum puts one discrete issue to the voters. That issue is capable, at least, of being analyzed to determine whether its adoption or rejection will have a disproportionate impact on an identifiable group of voters. If it is found to have such a disproportionate impact, the question then is whether a State can recognize that impact either

by limiting the franchise to the voters specially affected or by giving their votes a special weight.

. . . .

If that question were posed in the context of annexation proceedings, the fact that the residents of the annexing city and the residents of the area to be annexed formed sufficiently different constituencies with sufficiently different interests could readily be perceived. The fact of impending union alone would not so merge them into one community of interest as constitutionally to require that their votes be aggregated in any referendum to approve annexation. . . . [¶] [I]n terms of recognizing constituencies with *separate and potentially opposing interests . . . separate voter approval requirements are based on the perception that the real and long-term impact of a restructuring of local government is felt quite differently by the different county constituent units that in a sense compete to provide similar governmental services. Voters in these constituent units are directly and differentially affected by the restructuring of county government, which may make the provider of public services more remote and less subject to the voters' influence. [¶] The provisions of New York law here in question no more than recognize*

> *the realities of these substantially differing electoral interests.* Granting to these provisions the presumption of constitutionality to which every duly enacted state and federal law is entitled, we are unable to conclude that they violate the Equal Protection Clause of the Fourteenth Amendment.

Id. at 266, 271-73 (footnotes omitted) (emphasis added).

As noted by the California Supreme Court, "*Lockport* recognizes the high degree of deference due to a voting-based classification when a state undertakes the essentially political task of apportioning power among its political subdivisions — 'constituent units that in a sense compete to provide similar governmental services.' " *Board of Supervisors*, 3 Cal.4th at 916, 838 P.2d at 1206, 13 Cal.Rptr.2d at 253 (quoting *Lockport*, 430 U.S. at 272).

In *Hunter*, the seminal constitutional decision regarding a state procedure regulating the formation and organization of local governmental entities, this Court unanimously rejected a challenge to the validity of a state statute which authorized the consolidation of two cities if a majority of the total votes cast in a referendum in the two cities approved the consolidation. This Court explained the exceedingly broad discretion that a state enjoys in regulating the formation or reorganization of political subdivisions within its boundaries:

> Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. . . . The number, nature, and

> duration of the powers conferred upon these corporations rests in the absolute discretion of the State. . . . The State . . . at its pleasure may modify or withdraw all such powers . . . expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State is supreme, and its legislative body, conforming its action to the state constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. Although the inhabitants and property owners may by such changes suffer inconvenience, and their property may be lessened in value by the burden of increased taxation . . . there is nothing in the Federal Constitution which protects them from these injurious consequences. The power is in the State and those who legislate for the State are alone responsible for any unjust or oppressive exercise of it.

Hunter, 207 U.S. at 178-79.

As the California Supreme Court pointed out, *Board of Supervisors*, 3 Cal.4th at 915, 838 P.2d at 1205, 13 Cal.Rptr.2d at 252, while more recent cases from this Court have recognized that *Hunter's* broad language must be qualified to avoid invidious discrimination, *e.g.*,

Gomillion v. Lightfoot, 364 U.S. 339 (1960), those recent decisions have not vacillated from the fundamental proposition that states have "extraordinarily wide latitude . . . in creating various types of political subdivisions and conferring authority upon them." *Holt Civic Club v. Tuscaloosa*, 439 U.S. 60 (1978).

In *Holt*, this Court laid to rest any claim that a state could not limit the vote on a referendum to specific, distinct interests. *Holt* involved a statutory scheme which granted the right to vote for a city's legislators only to persons residing within the city limits, but at the same time gave the city authority to enact police and other regulations governing certain populated areas outside the city boundaries. The residents of the affected area on the outskirts of the city challenged the statute. The affected nonresidents contended that because the city's police regulations directly affected them, they should have the same right as city residents to vote in the city's elections.

This Court rejected that claim, emphasizing that past voting rights cases all recognized the legitimacy of limiting the vote to those persons who were residents of a specific, distinct political area despite whatever effects the vote would have on nonresidents. Spurning a suggestion that any system which denies the right to vote to some persons affected by the decisions of others must be examined under a strict scrutiny test, this Court, citing *Hunter* with approval, reaffirmed that states have "extraordinarily wide latitude . . . in creating various types of political subdivisions and conferring authority upon them." *Id.* at 71. Thus, whether the statutory scheme "bear[s] some rational relationship to a legitimate state purpose" comprises the only equal protection question which needs answering. *Id.* at 70.

Quoting *Fort Smith Light Co. v. Paving District*, 2
U.S. 387, 391 (1927), this Court stated in *Holt*:

> "The Fourteenth Amendment does not prohibit legislation merely because it is special, or limited in its application to a particular geographical or political subdivision of the state." Rather, the Equal Protection Clause is offended only if the statute's classification "rests on grounds wholly irrelevant to the achievement of the State's objective."

Holt, 439 U.S. at 70 (citations omitted). Indeed, in *Ho*
this Court rejected the significant effects test urged
Petitioner:

> Appellants' argument that extraterritorial extension of municipal powers requires concomitant extraterritorial extension of the franchise proves too much. The imaginary line defining a city's corporate limits cannot corral the influence of municipal actions. A city's decisions inescapably affect individuals living immediately outside its borders. The granting of building permits for high rise apartments, industrial plants, and the like on the city's fringe unavoidably contributes to problems of traffic congestion, school districting, and law enforcement immediately outside the city. A rate change in the city's sales or ad valorem tax could well have a significant impact on retailers and property values in areas bordering the city.

> The condemnation of real property on the city's edge for construction of a municipal garbage dump or waste treatment plant would have obvious implications for neighboring nonresidents. Indeed, the indirect extraterritorial effects of many purely internal municipal actions could conceivably have a heavier impact on surrounding environs than the direct regulation contemplated by Alabama's police jurisdiction statutes. *Yet no one would suggest that nonresidents likely to be affected by this sort of municipal action have a constitutional right to participate in the political processes bringing it about.* And unless one adopts the idea that the Austinian notion of sovereignty, which is presumably embodied to some extent in the authority of a city over a police jurisdiction, distinguishes the direct effects of limited municipal powers over police jurisdiction residents from the indirect though equally dramatic extraterritorial effects of purely internal municipal actions, it makes little sense to say that one requires extension of the franchise while the other does not.

Id. at 69-70 (emphasis added).

Consequently, a state may "constitutionally disenfranchise" those voters who lack the requisite special interest in the subject matter of the election. This Court reached the same conclusion in an earlier decision, *Dunn*

v. Blumstein, 405 U.S. 330 (1972). The *Dunn* Court stated:

> We have in the past noted approvingly that the States have the power to require that voters be bona fide residents of the relevant political subdivision. . . . An appropriately defined and uniformly applied requirement of bona fide residence may be necessary to preserve the basic conception of a political community, and therefore could withstand close constitutional scrutiny.

Id. at 343-44 (citing *Evans v. Cornman*, 398 U.S. 419, 422 (1970); *Kramer v. Union Free School District*, 395 U.S. 621, 625 (1969); *Carrington v. Rash*, 380 U.S. 89, 91 (1965); *Pope v. Williams*, 193 U.S. 621 (1904)) (footnote omitted).

In the final analysis, then, a statutory provision which forms part of a legislative scheme is not constitutionally suspect simply because it limits the votes to residents of the proposed new city. Although the city may not yet technically be a separate political entity, *Lockport*, *Hunter*, and *Holt* make it clear that a state may determine that the proposed residents' interests are sufficiently different from others who may be affected by the cityhood proposal that the proposed city can be properly treated as a distinct entity for the purpose of confirming an incorporation proposal. In this case, the California Supreme Court found "genuinely different relevant interests" between residents in the area to be incorporated and the remaining county residents. *Board of Supervisors*, 3 Cal.4th at 917, 838 P.2d at 1206, 13 Cal.Rptr.2d at 253. Limiting the vote to confirm incorporation to those most interested was fairly related to

the Legislature's purpose of promoting orderly growth and development. *Id.* at 923, 838 P.2d at 1211, 13 Cal.Rptr.2d at 258.

Petitioner's attempt to invoke the strict scrutiny standard is not in line with this Court's rulings in *Hunter, Lockport*, or *Holt*. Petitioner's claim that the case raises unsettled constitutional issues of national significance rests upon a misapplication of other case law. The California Supreme Court appropriately applied this Court's rulings in upholding the validity of section 57103 in the context of the orderly formation of cities under California law. As a result, the Petition for Writ of Certiorari should be denied.

CONCLUSION

Petitioner misinterprets this Court's rulings when it suggests that the California Supreme Court employed faulty analysis in upholding the constitutionality of Government Code section 57103. This Court has repeatedly stated that states have plenary authority over their political subdivisions. So long as a statutory scheme does not cause, on its face, invidious discrimination based on such characteristics as race, the scheme will not be subject to strict scrutiny. Rather, the scheme will survive constitutional scrutiny if it bears some fair relationship to a legitimate governmental purpose. Here, Government Code section 57103 constitutes one part of a larger, deliberative statutory scheme for the incorporation of new cities throughout the State of California. Limiting the vote to confirm incorporation to those most interested, the new city's residents, is rationally related to the state's objective of promoting the orderly growth and development of cities. Because this area of the law has been long-settled, and this case raises no new issues,

Amicus Curiae respectfully submits that this Court deny Petitioner's request for a writ of certiorari.

Dated: March 5, 1993.

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